



Paper No. 11

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OFFICE OF PETITIONS

ON PETITION

In re Application of
Borts et al.
Application No. 09/091,605
Filed: June 16, 1998
Attorney Docket No. X-9872

This is a decision on the petition under 37 CFR 1.137(b), filed on September 11, 2001, to revive the above-identified application.

The petition is **DISMISSED**.

This application became abandoned on March 20, 2001 for failure to timely submit a proper reply to the final Office Action, mailed on December 19, 2000, which set a 3-month shortened statutory reply period. No response was filed during that period and no extensions of time were obtained. A Notice of Abandonment was mailed on August 23, 2001.

A grantable petition under 37 CFR 1.137(b)¹ must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed;² (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) a terminal disclaimer and the accompanying fee for a utility application filed before June 8, 1995, as required by 37 CFR 1.137(d).³

The instant petition is dismissed for lacking item (1) above, i.e., it is not accompanied by the filing of a request for a CPA or a continuing application under 37 CFR 1.53(b); an RCE in accordance with 37 CFR 1.114; a notice of appeal; or a proper amendment, i.e., an amendment that *prima facie* places the application in condition for allowance.⁴

¹ As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

² A required reply to a final Office action, as is in the instant case, must be: the filing of a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) (for utility or plant applications filed before 5/29/00) or a continuing application under 37 CFR 1.53(b); a request for continued examination (RCE) by filing a submission under 37 CFR 1.114 (for utility or plant applications filed on or after 6/8/95); a notice of appeal; or a proper amendment, i.e., an amendment that cancels all the rejected claims or otherwise *prima facie* places the application in condition for allowance. See MPEP 711.03(c)(III)(A)(2)(b) (Aug. 2001).

³ Not applicable to this application.

⁴ No claims stand allowed under the 12/19/00 final Office Action. Otherwise, an amendment canceling all the rejected claims would also be a form of proper reply. See note 2, *supra*.

Any request for reconsideration of this decision, to be grantable, must be accompanied by items (1) and (3) noted above.⁵ Such a renewed petition must be addressed as instructed below, and must be filed within **TWO (2) MONTHS** from the mailing date of this decision unless proper extensions of time are obtained under 37 CFR 1.136(a):

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By fax: (703)308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Finally, the Office notes that the petition also asserts nonreceipt of the December 19, 2000 final Office Action by Applicants. As an alternative to filing a renewed petition under 37 CFR 1.137(b) to revive this application, Applicants may consider filing a petition to withdraw the holding of abandonment based on the alleged failure to receive that Office Action.⁶ Such a petition should be addressed to the appropriate Group Director of Technology Center 1600,⁷ and must include the required showing to establish nonreceipt of the December 19, 2000 final Office Action.⁸

The \$1,240 petition fee has been charged to Deposit Account No. 05-0840 as authorized in the instant petition.⁹

Telephone inquiries concerning this matter may be directed to Petitions Attorney RC Tang at (703) 308-0763.



Beverly M. Flanagan
Supervisory Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

⁵ A renewed petition under 37 CFR 1.137(b) does not incur a petition fee.

⁶ See MPEP section 711.03(c)(I), (II) (Aug. 2001).

⁷ MPEP section 1002.02(c)(3)(b) (Aug. 2001). Applicants may contact the Examiner to determine the proper location for filing.

⁸ See MPEP section 711.03(c)(II) (Aug. 2001) for guidance.

⁹ The fee has increased to \$1,280 effective 10/1/01, subsequent to the filing of this petition.